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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D C

In the Matter of

Advanced Television Systems and Their
Impact Upon the Existing Television
Broadcast Service

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MM Docket No. 87-268

To: The Commission

**OPPOSITION TO PETITION OF CHANNEL 51 OF SAN DIEGO
FOR RECONSIDERATION OF ALLOTMENT OF DTV
CHANNEL 51 TO KRPA-TV, RANCHO PALOS VERDES, CA.**

Rancho Palos Verdes Broadcasters, Inc. ("RPVB"), the permittee of Station KRPA(TV), Rancho Palos Verdes, California ("Station"), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules, hereby opposes the Petition for Reconsideration filed by Channel 51 of San Diego, Inc. ("CSD"), the licensee of Station KUSI-TV, San Diego, California, to the Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order in MM Docket No. 87-268, released February 23, 1998 ("MO&O").¹ In support thereof, RPVB states as follows.

1. CSD's Petition relates to only a single portion of the MO&O, involving a requested deletion of the proposed allotment in the DTV Table of Allotments for the Station. In the rulemaking proceeding that led to the adoption of the Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1998), the Commission had proposed the DTV allotment of Channel 51 for the Station. In seeking reconsideration of the Sixth Report and Order, the

¹ This pleading is being submitted within 15 days of the May 11, 1998 Federal Register notice of the filing of petitions for reconsideration.

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Association for Maximum Service Broadcasters, Inc. ("MSTV") proposed a series of changes to the DTV Table of Allotments. Among the changes were ones dealing with DTV allotments in the California coastal region. Included among the suggested MSTV changes was one to allot Channel 29 to the Station in place of Channel 51. RPVB was in full support of this allotment and in a pleading submitted to the Commission (Attachment A hereto) urged the Commission to adopt this allotment as it served to replicate the Station's area of service far better than the Channel 51 allotment would.

2. In the MO&O, however, the Commission decided that it could not adopt the MSTV proposal as it related to the Station. The Commission determined that the allotment of Channel 29 to the Station for its DTV operations would involve a violation of spacing requirements with Mexico. MO&O at n.22. Even though the FCC did allow the use of Channels 68 and 69, it could not provide the Station with any better DTV allotment. As a result, the Station's DTV allotment was not moved to another frequency.

3. With these facts as a predicate, one has a better understanding as to why CSD has appeared at this late date to request that the Channel 51 allotment not be modified to specify another channel, but deleted in its entirety. While CSD appears to ground its argument in support of the benefit to the public interest from the elimination of an unbuilt station from the Table of Allotments and the promotion of efficient use of the spectrum, this is far from reality. In fact, CSD's only, but unspoken, concern is that the operation of a DTV station on Channel 51 will interfere with CSD's analog operations on Channel 51.²

² In this regard, the Commission should note that CSD has not requested that any other permittee that has received a DTV allotment not receive that allotment. This could easily have been accomplished in a pleading dealing with unbuilt stations. Its failure to file a pleading dealing

4. RPVB agrees with CSD that Channel 51 is not the best allotment at Rancho Palos Verdes, California. It had supported the MSTV proposal because MSTV was recommending a series of changes that optimized DTV allotments in the crowded California coastal region and provided the Station with a DTV allotment that offered 100% replication instead of the 79% replication predicted by the Commission. RPVB has not been wedded to Channel 51; but, in the absence of a viable alternative to Channel 51, RPVB submits that Channel 51 is the only available channel for it to utilize.

5. If CSD wished to serve the public interest, it would have retained a consulting engineer and proposed to the Commission that it allot another DTV channel in place of Channel 51. If CSD had undertaken such an action, RPVB would have been pleased to join in and lend its support. Instead, CSD, recognizing the absence of any alternative channel, has presented a meritless Petition that doesn't serve the public interest but seeks only to eliminate a competing signal in order to protect and promote CSD's own broadcast service. The Commission should be supporting competition and not competitors and for that reason alone it should deny the Petition. Further, as will be show herein, CSD's Petition is both procedurally defective and lacks any basis upon which to be granted. As such, it must be summarily dismissed.

6. Turning first to the procedural defects attendant to CSD's pleading, the Commission need look no further than Section 1.429(b) of the Commission's Rules. That provision permits a party to seek reconsideration based on facts not previously presented only based on changed circumstances, matters previously unknown to the party, or a public interest showing. CSD has

with all similarly situated parties reflects its interest in preserving its own analog station, not the public interest

failed to recognize its obligation to make such a showing and presented no evidence in its pleading that would allow the Commission, sua sponte, to permit CSD to maintain its otherwise meritless Petition. In that the unbuilt state of the Station was a matter of public knowledge at the time of the issuance of the Sixth Report and Order, CSD has no basis for having failed to raise its argument at the time the DTV Table of Allotments was initially proposed. As for any public interest argument, the showing, infra, as to the lack of merit to CSD's substantive argument, eliminates that as a basis for the consideration of its pleading. Consequently, the Petition for Reconsideration should be denied forthwith.

7 Turning to the merits, CSD's argument is that since the Station is presently unbuilt, RPVB is not entitled to a DTV allotment. This argument is supported by not a single citation to statute, rule, or court decision. On such a thin reed, there is no basis whatsoever to delete an allotted frequency. In fact, the Commission is prohibited from doing so

8 This Commission's consideration of CSD's Petition is controlled by Section 336 of the Telecommunications Act of 1996. That provision provides, in pertinent part:

(a) Commission Action.----If the Commission determines to issue additional licenses for advanced television systems, the Commission----

“(1) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both)...

RPVB submits that the statute gives the Commission no choice in its issuance of DTV allotments.

If a party is a licensee or a permittee at the time that the Commission is awarding DTV allotments,

it must receive a DTV allotment. The Commission lacks any authority by virtue of the very specific language of the statute to make a determination that a party that is otherwise qualified cannot receive a DTV allotment and CSD has not shown that the Commission has discretion to act to the contrary. RPVB also submits that even if there was some discretion, it would be an abuse of such discretion to deny a DTV allotment to a permittee or licensee that holds a construction permit that is valid and outstanding. CSD has not shown that RPVB does not hold a valid and outstanding construction permit.

9. This was confirmed in the Fifth Report and Order in MM Docket No. 87-268, where the Commission reasoned (¶ 17), in adopting eligibility criteria, that

Following Congress' direction, we determine that initial eligibility should be limited to those broadcasters who, as of the date of issuance of the initial license, hold a license to operate a television broadcast station or a permit to construct such a station, or both.

This determination was never challenged by CSD. Having failed to do so, CSD is now foreclosed from in any manner challenging the criteria for eligibility to receive a DTV allotment. In that the eligibility criteria offer no room for Commission discretion, provided a party is a licensee or permittee, as RPVB is, CSD has no basis to argue with it. In turn, the Commission has no grounds to consider an argument that it should at this stage in the DTV proceeding modify the DTV Table of Allotments to rescind an allotment to a Station that holds a valid construction permit or license.

10. It is, therefore, obvious that CSD has no basis whatsoever for the relief it seeks. Whether its recourse is to have the Commission modify the NTSC Table of Allotments, which contains an allotment for a station that holds a valid construction permit, is not a matter before the

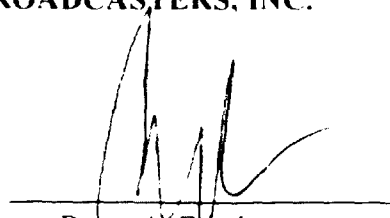
Commission at this time. The only question properly before the Commission is whether the Commission can at this time refuse to award a DTV allotment to a Commission permittee which holds a valid and outstanding construction permit. As has been shown herein, the Commission cannot do so and has no authority to act as CSD requests. Therefore, the Petition filed by CSD fails on substantive as well as procedural grounds and must be denied.

WHEREFORE, it is respectfully requested that the Petition for Reconsideration filed by Channel 51 of San Diego, Inc. should be dismissed or, in the alternative, denied.

Respectfully submitted,

**RANCHO PALOS VERDES
BROADCASTERS, INC.**

By



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Its Attorneys

Dated May 26, 1998

Attachment A

FILE COPY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In The Matter Of)
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Advanced Television Systems)
and Their Impact Upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS ON EX PARTE FILINGS ADDRESSING DIGITAL TV ALLOTMENTS

Rancho Palos Verdes Broadcasters, Inc. ("RPV"), the permittee of Station KRPA(TV), Rancho Palos Verdes, California, by its attorneys, hereby submits its Comments on the ex parte submissions presented by the Association for Maximum Service Television, Inc. ("MSTV") on November 20, 1997 and the Association of Local Television Stations, Inc. ("ALTV") on November 25, 1997. These Comments are filed in response to the FCC's Public Notice issued on December 2, 1997 inviting Comments on the ex parte submissions presented by MSTV and ALTV. In support thereof, RPV states as follows.

1. The MSTV has provided the Commission with a valuable service by having undertaken modifications to the DTV Table of Allotments in the spectrum-congested areas of the Northeast, Great Lakes region and the California coastal region. The impact

¹ MSTV's pleading was styled, "Ex Parte Submission Based on New Technical Discoveries to Help the Commission Improve the DTV Table of Allotments/Assignments Submitted by The Association for Maximum Service Television, Inc. and Other Broadcasters."

of DTV allotments in these congested areas is significant and RPV joins with MSTV in a desire to optimize DTV allotments. RPV believes that MSTV has accomplished a fair and equitable result in its work.

2. The potential for interference has been brought home to RPV by a review of the MSTV pleading. According to the MSTV's research, Station KRPA(TV) can expect only a 78.3% replication of its signal.² A loss of more than 20% is of significance, especially to a new broadcast station that has to establish itself in a highly competitive market such as the Los Angeles, California one.

3. Recognizing the problems that exist in the California coastal markets, MSTV has worked out a responsible solution. According to the MSTV's proposal, the DTV Table of Allotments would be modified so that Station KRPA(TV) would be allotted to Channel 29 instead of Channel 51. The results of this change are significant. Whereas the FCC Table would result in a replication of service of about 78% to 79%, the change in channel for Station KRPA(TV) will produce a 99.2% replication. This result provides the continued level of service that the Station and the viewing public are entitled to.

² Unlike the DTV-to-DTV allotment issue, the FCC's own work on replication has been proven correct by the MSTV. In the Sixth Report and Order in MM Docket No. 87-268, FCC 97-115, released April 21, 1997, the Commission predicted a 79.1% replication.

4. The MSTV efforts in seeking to deal with the spectrum-congested California coastal region are ones to be applauded. It has provided the Commission and broadcasters with a means to reduce congestion and provide stations and the public with the broadcast service they are entitled to. As a result, the Commission should take all actions necessary to minimize congestion in the California coastal region and, in particular, it must modify the DTV Table of Allotments so that Station KRPA(TV)'s DTV allotment is changed from Channel 51 to Channel 29.

5. As for the ALTV document, it addresses another serious matter that has arisen in connection with the DTV Table of Allotments. There is present an obvious and significant disparity in the power levels provided for existing UHF stations as opposed to VHF stations that are receiving UHF DTV allotments. This should not be ignored and existing UHF broadcasters are entitled to far greater comparability than they have received. ALTV is entirely correct in proposing a mechanism for increasing the signal strength of UHF broadcasters and the Commission should respond to this with rules establishing power levels that achieve such a result while not producing impermissible interference to

other stations, especially in urban areas.

Respectfully submitted,

RANCHO PALOS VERDES
BROADCASTERS, INC.

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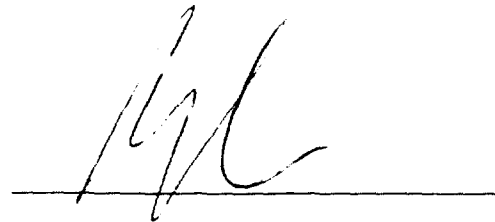
Its Counsel

Dated: December 17, 1997

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 26th day of May, 1998, served a copy of the foregoing, "Opposition to Petition Of Channel 51 Of San Diego for Reconsideration Of Allotment Of DTV Channel 51 To KRPA-TV, Rancho Palos Verdes, California," to the following party by first-class mail, postage prepaid:

Robert B. Jacobi, Esq.
Cohn & Marks
1920 N Street, NW
Washington, D.C 20036

A handwritten signature in dark ink, appearing to be "RBJ", is written over a horizontal line.